



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

DEC 22 2005

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Edward H. Murphy  
Downstream General Manager  
American Petroleum Institute  
1220 L Street, NW  
Washington, DC 20005-4070

Re: Extensions of Exercises of Enforcement Discretion

Dear Mr. Murphy:

I am writing regarding three gasoline requirements that were the subject of previous letters in which the United States Environmental Protection Agency (EPA) exercised its enforcement discretion to allow compliance flexibilities that are not included in the applicable regulations.<sup>1</sup> In these instances the exercises of enforcement discretion, which expire on December 31, 2005, were intended to allow time for EPA to complete a rule change that would codify the compliance flexibilities. However, these rule changes have not been completed. As a consequence, as more fully described below, the exercise of enforcement discretion in these instances is being extended to allow additional time for completion of the rule changes.

Gasoline Sulfur Standard for Transmix Processors

On December 24, 2003, EPA exercised its enforcement discretion to allow parties that process transmix<sup>2</sup> to produce gasoline subject to sulfur standards that are less stringent than otherwise is allowed under the gasoline sulfur regulations at 40 C.F.R. Part 80, Subpart H. As explained in the December 24, 2003 letter, this is appropriate because transmix sometimes contains gasoline subject to less stringent sulfur standards that was produced by small refiners

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<sup>1</sup> These letters are: December 24, 2003 letter from John Peter Suarez to Edward H. Murphy; January 16, 2004 letter from Thomas V. Skinner to Peter Lidiak; and November 23, 2004 letter from Thomas V. Skinner to Edward H. Murphy.

<sup>2</sup> Transmix is a mixture of gasoline and distillate that results when these two products are transported in sequential batches through a petroleum products pipeline, causing mixing to occur at the interface between these two products. A transmix processor operates a facility that separates transmix into its gasoline and distillate portions, normally through distillation, so that these products can be reintroduced into the distribution system.

under 40 C.F.R. § 80.240, or that was produced for use in the geographic phase-in area (GPA) under 40 C.F.R. § 80.216. Transmix processors may have difficulty meeting the normally-applicable gasoline sulfur standard due to the presence of small refiner or GPA gasoline.

The considerations that justified the 2003 exercise of enforcement discretion regarding the sulfur standard for transmix processors have not changed. However, EPA has not completed the rulemaking that would codify this change. As a consequence, the exercise of enforcement discretion announced in the 2003 letter is being extended until December 31, 2007, or until EPA completes the rule change regarding transmix sulfur standards, whichever is earlier. This extension is subject to the limitations and conditions that are described in the December 24, 2003 letter, which can be found at: <http://www.epa.gov/compliance/resources/policies/civil/caa/mobile/transmixdisc.pdf>.

#### Refiner and Importer Quality Assurance Requirements for RBOB

On December 3, 2003, EPA exercised its enforcement discretion to allow refiners to use alternative procedures for conducting quality assurance (QA) programs for reformulated gasoline blendstock for oxygenate blending (RBOB) required under 40 C.F.R. § 80.69, in the RFG covered areas in New York and Connecticut. On November 23, 2004, this exercise of enforcement discretion was extended to apply to all RFG covered areas nationwide.

As explained in the 2003 and 2004 letters, this exercise of enforcement discretion allows refiners to use an independent survey association, funded by an industry consortium, to conduct sampling and testing of RFG used in each covered area, in lieu of each refiner tracking its RBOB through the fungible distribution system to conduct refiner-specific QA testing.

The considerations that justified these 2003 and 2004 exercises of enforcement of discretion have not changed. However, EPA has not completed the rule change that would codify these flexibilities. As a consequence, the enforcement discretion announced in the 2003 and 2004 letters is being extended until December 31, 2007, or until EPA completes the rule change regarding QA testing for gasoline produced using RBOB, whichever is earlier. This extension is subject to the limitations and conditions that are described in the 2003 and 2004 letters, which can be found at: <http://www.epa.gov/compliance/resources/policies/civil/caa/mobile/ctnyfueldiscretion120303.pdf> and <http://www.epa.gov/compliance/resources/policies/civil/caa/mobile/rbobqa.pdf>.

#### Alternative Test Methods

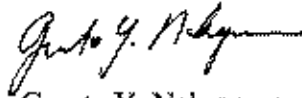
On June 16, 2004, EPA exercised its enforcement discretion to allow use of alternative test methods for measuring the aromatic and oxygen content of gasoline and the sulfur content of butane, under 40 C.F.R. § 80.46. These alternative test methods are: American Society for Testing and Materials (ASTM) D 1319 for measuring aromatics in gasoline (see, 40 C.F.R. 80.46(f)(3)(i)); ASTM D 4815 for measuring oxygen in gasoline (see, 40 C.F.R. 80.46(g)(2)(i));

and ASTM D 6667 for measuring sulfur in butane. As explained in the 2004 letter, use of these alternative test methods is appropriate when employed in the manner described in the 2004 letter.

The considerations that justified the 2004 exercise of enforcement discretion regarding use of these alternative test methods have not changed. However, EPA has not completed the rulemaking that would codify these changes. As a consequence, the exercise of enforcement discretion announced in the 2004 letter is being extended until December 31, 2006, or until EPA completes the rule change regarding these alternative test methods, whichever is earlier. This extension is subject to the limitations and conditions that are described in the June 16, 2004 letter, which can be found at: <http://www.epa.gov/compliance/resources/policies/civil/caa/mobile/astmdiscretion.pdf>.

If you have any questions regarding these matters, you may call George Lawrence, Chief of the Mobile Source Enforcement Branch, at (202) 564-1307.

Sincerely,



Granta Y. Nakayama  
Assistant Administrator